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C O N F I D E N T I A L SECTION 01 OF 02 BEIJING 002691

SIPDIS

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SUBJECT: ONLINE MUSIC DISTRIBUTION FACES MORE HURDLES IN  
CHINA

Classified By: M/C for Economic Affairs William Weinstein. Reasons 1.4  
b/d.

11. (SBU) Summary. China issued new regulations on September 3 requiring all foreign-recorded music be reviewed by the Ministry of Culture (MOC) before being distributed online. Online music providers must also prove to the MOC they have permission from copyright owners to sell and distribute the songs. Purportedly aimed at cracking down on internet piracy, Embassy contacts believe the measures are overly burdensome for legitimate businesses operating in China and may even promote digital piracy. Industry representatives also told the Embassy the regulations do not take into account current music industry practices and registering the one million songs already in circulation in China by the December 31 effective date would be impossible. A MOC official dismissed such claims during a meeting September 16 with visiting USTR official and expressed willingness to work with internet content providers and international record industry representatives to tweak the regulations as necessary. He said delaying the measures is not possible. End summary.

12. (U) On September 3, the Chinese government promulgated the "Circular of the Ministry of Culture on Strengthening and Improving Online Music Content Examination" (Circular) which requires all foreign music receive MOC approval before being made available online. According to the regulations, record companies must contract with an exclusive licensee to distribute their music in China. That licensee must then submit to the Ministry the lyrics of each foreign song, translated into Chinese, along with evidence they have permission from the copyright owner to sell and distribute the songs. After obtaining the Ministry's approval, the licensee can then sell or license the songs to internet content providers. These regulations pertain only to music recorded outside of China - domestic music as well as that from Hong Kong, Macao and Taiwan is exempt.

Cracking Down on Internet Piracy?

13. (U) The new rules are intended to eliminate illegal distribution of online music and shut down unauthorized internet content providers, MOC Department of Cultural Market Vice Director General Tuo Zu Hai told Deputy Assistant U.S. Trade Representative and Chief IP Negotiator Kira Alvarez September 16. While recognizing there are still many outstanding issues regarding implementation, the Ministry will nonetheless require industry to be in compliance with the new rules by December 31, Tuo said. He stated the Ministry met with online content providers as well as

domestic and international music industry representatives during the drafting process in an effort to address their concerns over the new regulations. Tuo expressed a willingness to continue to reach out to industry after the rules are implemented to make adjustments as necessary.

#### MOC Experts to Review Song Lyrics

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14. (U) Tuo explained the MOC has gathered a group of 100 experts who will review all approval applications. While the Circular itself does not specifically lay out timing for the review process, Tuo said newly issued music will be reviewed within three working days. Other applications may take twenty to thirty working days depending on the complexity of the case. If the expert panel determines a piece of music runs afoul of Chinese copyright law or other rules and regulations, the violator would be referred to the relevant Ministry or Department with jurisdiction over the issue. Tuo declined to specify what other laws or regulations may be considered by the panel during the review process.

#### "Managing and Controlling" the Online Music Market

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15. (U) Alvarez conveyed industry concerns that the regulations are overly burdensome and do not take into account current music industry practices. In particular, she noted record companies rarely grant exclusive licenses, preferring to contract with multiple distributors or content providers. In a market as large as China's this could mean agreements with several hundred distributors. Given these

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concerns, Alvarez urged the Ministry to delay the effective date. Tuo replied that mandating an exclusive licensee renders the online music market easier to "manage and control." Delaying the effective date is not an option at this time, he said.

16. (SBU) International Federation of Phonographic Industry (IFPI) Regional Director May-Seey Leong took exception to the MOC Circular during a meeting with Emboffs September 15. Leong stated the regulations are extremely onerous, adding unnecessary complexities for legitimate businesses operating in China. In fact, the Circular is nearly identical to a draft proposal the Ministry floated in February 2009 which was then withdrawn in the face of strenuous industry, USG and EU objections, Leong said. She further stated that, contrary to Tuo's claims, her organization was never consulted during this last drafting process. (Note: Leong did acknowledge her organization had provided reactions to the first proposal that was later withdrawn. End note.)

#### Over One Million Songs to Register by December 31

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17. (SBU) Leong explained IFPI has many serious concerns with the current version of the Circular. For example, Leong said physical music releases in China are already subject to stringent censorship requirements through the General Administration of Press and Publication (GAPP). Requiring an additional review process will delay a song's online release, allowing digital pirates to step in to fill the gap. In addition, the rules are not clear about the treatment of search engines such as Baidu that offer deep links to music sources hosted on other servers. Moreover, with over one million songs currently licensed in China, providing Chinese translations and proof of copyright permissions by the December 31 effective date is simply not realistic, Leong exclaimed. Finally, Leong believes the mandate to use an exclusive licensee may be in violation of the WTO's August 2009 ruling that China cannot block foreign-owned companies from acting as importers and wholesalers of music.

Ulterior Motives?

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18. (C) Leong believes the MOC has ulterior motives in issuing the new regulations and may reflect a power struggle between the MOC and GAPP. Prior to July 2008, MOC was responsible for censoring internet content. In an effort to streamline overall censorship efforts, and perhaps to reduce the Ministry's power, this responsibility was given to GAPP. Leong also believes the MOC may have a longer term goal of using the new system to extort fees from record companies by, for example, requiring lyric translations be done by a service associated with the Ministry.

Comment

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19. (SBU) It is somewhat encouraging that MOC's Tuo conveyed a willingness to work with foreign record companies to make improvements to the regulations after the December 31 effective date. However, the regulations as currently written are unreasonable and may be in violation of the August WTO findings. If the Chinese government's true intent is to combat internet piracy, new regulations are not the way to go. Rather, the government needs to step up enforcement of the laws it already has on the books. End comment.

HUNTSMAN